

We have recently received several e-mail and telephone questions from cities asking whether the Political Reform Act's (the "Act")¹ conflict of interest provisions under Section 87100 apply to votes made by city councilmembers pursuant to Elections Code Section 10229.

In each of these cities, there are some city council positions open for election for which only the incumbent city council member has filed for re-election. In the alternative, there may be several at-large city council positions open for election, the number of candidates who have filed for election does not exceed the number of at-large positions open, and the group that has filed includes one or more incumbent city councilmembers.

Presumably to offer the option of avoiding the cost of holding an election, Elections Code Section 10229 addresses this situation in general law cities and applicable charter cities (see Elections Code Section 330) by permitting the city council to select from three options: (1) Appoint to office the candidate or candidates who have filed; (2) Appoint to office any eligible elector if there are no candidates; or (3) Hold the election, if there is only one candidate or no candidates. (Elections Code Section 10229(a).)

This situation presents a conflict of interest issue for city councilmembers under the Act's "personal financial effect" rule, since they are voting to appoint themselves to the next term of office. (See Section 87103(a) and Regulation 18705.5(b).) Also, because the city council has the option to still schedule an election in some cases, Election Code Section 10229's requirements do not cleanly fit under the exception that permits officials to vote to appoint themselves to other offices under Regulation 18705.5(c).

Despite the provisions of Section 87103(a) and Regulation 18705.5, we nevertheless conclude that when city councilmembers vote on their appointment to office under the provisions of Elections Code Section 10229 they do not have a conflict of interest under the Act. Elections Code Section 10229 clearly permits the city councilmembers to vote on their own appointment to office and offers a practical approach to avoid the cost of holding an election when the councilmember has no opponent in the election. As such, actions taken under Elections Code Section 10229 do not conflict with the Act's conflict of interest provisions.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.